

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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<b>SUMMERLIN ASSET MANAGEMENT V.</b>	:
<b>TRUST,</b>	:
Plaintiff,	: <b>MEMORANDUM AND ORDER</b>
– against –	: 15-CV-769 (AMD) (RML)
<b>MODUPE OYENUGA, et al.,</b>	:
Defendants.	:
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**ANN M. DONNELLY**, United States District Judge:

On February 13, 2015, the plaintiff commenced this foreclosure action relating to a property located at 102-09 216th Street in Queens Village, New York (the “Property”). (ECF No. 1.) The defendants did not respond, and the Clerk of Court entered certificates of default against them. (ECF Nos. 14, 19.) On August 17, 2016, the plaintiff moved for default judgment (ECF No. 19), and I referred the motion to Magistrate Judge Robert M. Levy for a Report and Recommendation. Judge Levy issued a Report and Recommendation on February 14, 2017, recommending that I grant the plaintiff’s motion, order the foreclosure and sale of the Property, appoint a referee, and enter a judgment against the defendant Modupe Oyenuga in the amount of \$593,420.24. (ECF No. 23.) I adopted Judge Levy’s Report and Recommendation in its entirety on March 20, 2017, and then entered a judgment of foreclosure and sale of the Property and appointed a referee. (ECF Nos. 25, 30, 38.) Avail 1 LLC (“Avail”) purchased the property at auction on February 15, 2019 (ECF No. 40), and this case was closed.

On January 31, 2022, Avail appeared in this action and filed a motion for a writ of assistance. (ECF No. 42-1 at 3.) Avail states that the defendants Oyenuga and Michael Ilonze

refuse to vacate the Property. Avail seeks an order joining it as a party plaintiff and “granting a Writ of Assistance and delivering possession of the Property to and in favor of Avail and against Defendants.” (*Id.*) I referred the motion to Judge Levy for a Report and Recommendation.

On April 20, 2022, Judge Levy issued a Report and Recommendation in which he recommended that the motion be denied. (ECF No. 45.) Judge Levy highlighted that Avail “cites no authority, and the court is aware of none, allowing a non-party purchaser to join a foreclosure case after final judgment and move for a writ of assistance evicting the previous owners.” (*Id.* at 2.) He noted that “Avail’s remedy seems to properly lie in New York State court, where N.Y. Real Property Actions and Proceedings Law (‘RPAPL’) § 221 permits a grant of a writ of assistance to a non-party purchaser of a foreclosed property at the court’s discretion.” (*Id.* at 4.) No objections have been filed to the Report and Recommendation, and the time for doing so has passed.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). To accept those portions of the report and recommendation to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)).

I have reviewed Judge Levy's comprehensive and well-reasoned Report and Recommendation and find no error. Accordingly, I adopt the Report and Recommendation in its entirety. The motion for a writ of assistance is denied.

**SO ORDERED.**

s/Ann M. Donnelly  

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ANN M. DONNELLY  
United States District Judge

Dated: Brooklyn, New York  
May 16, 2022